

(1897) 04 AHC CK 0005
In the Allahabad High Court

Hanuman Prasad Singh and Others

APPELLANT

Vs

Bhagauti Prasad and Others

RESPONDENT

Date of Decision : 10-04-1897

Acts Referred:

Citation : (1897) ILR (All) 357

Hon'ble Judges : Knox, J;Burkitt, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Knox, J.—The property in dispute in the present appeal is the village of Kot Kamharya. The plaintiffs, Babu Hanuman Prasad Singh and Babu Jadu Nath Singh, who are now appellants, claim to be entitled to, and ask to be put in possession of, it as being the grandsons of Babu Paltan Singh, deceased. There are two other persons arrayed as plaintiffs who are transferees in respect of 8 annas of the property under a deed executed in their favour by Babu Hanuman Prasad Singh and Babu Jadu Nath Singh, dated the 16th of February 1994.

2. Babu Paltan Singh died in 1299 Fasli, which corresponds with 1822 A. D. He left him surviving two widows and three daughters, but no male issue. The appellants are the sons of Rachpal Kunwari, the eldest of the three said daughters.

3. The appellants contend that under the Hindu Law each of the widows and of the daughters was entitled to nothing further than a life interest in the property. Both the widows according to them came into possession of the entire estate upon the death of Babu Paltan Singh. Upon the death of one of the two, Musammat Harnam Kunwari, the surviving widow continued to be recorded in the Collector's records as in possession. While thus in possession she, without right or legal necessity, made a gift of the property to one Harnam Pathak, the ancestor of the respondents, and got mutation of names recorded in his favour. The respondents are still in possession, and the present suit is for their

ejection in favour of the appellants.

4. On the 5th of February 1857, Musammat Harnam Kunwari died and was succeeded by the three daughters. Each of these died in turn; the date on which the last of them died is the 3rd of March 1890, and it is on this date that the appellants maintain that their cause of action accrued, as it was on this date that they first became entitled to succeed as heirs to Babu Paltan Singh.

5. One of the pleas raised in defence was that the claim was barred by limitation.

6. The Subordinate Judge held that the cause of action accrued to the appellants on [the expiry of twelve years from the date of?] the death of Musammat Harnam Kunwari and that the suit was governed by Act No. XIV of 1859. The suit had therefore to be brought within twelve years from the time when the cause of action arose. The twelve years of dispossession which followed upon the death of Musammat Harnam Kunwari barred the daughter's right and also barred the plaintiffs, and he therefore dismissed the claim.

7. The only question which was argued, and which arises for decision, is whether the suit was or was not barred by limitation.

8. It is contended on behalf of the appellants that the case is not governed by Act XIV of 1859, but by Article 141 of Schedule ii of Act No. XV of 1877. This article provides that in the case of suits by a Hindu entitled to the possession of immovable property on the death of a Hindu female, the period of limitation prescribed within which the suit can be brought is twelve years from the date when the female in question dies. The possession of the respondents could not begin to run adversely to the appellants until the 3rd of March 1890, the date on which the last surviving daughter of Babu Paltan Singh died.

9. It is further contended that under the Hindu Law widows and daughters take a qualified estate, which is interposed between that of the last male owner and the next male reversioner, and that as between the family and a stranger each such widow or daughter represents the inheritance for the time being. The appellants, who are sons of one of the daughters, do not claim from or under their mother, but they claim as the next male sapindas of their maternal grandfather, into possession of whose estate, however, they could not come until all the widows and daughters had passed away. So far as Act No. XIV of 1859 is concerned it is contended that it contained no provision which could bar such a right as that of the appellants. At the outside all that it did was to take away the remedy under that Act. The right survived and under it the appellants could maintain their present claim.

10. In support of their contention we were referred to *Sambasiva v. Ragava* ILR 13 Mad. 512, to *Cursandas Govindji v. Vundravandas Purshotam* ILR 1914 Bom. 482, and to *Mukta v. Dada valad Supadu* ILR 18 Bom. 216.

11. The respondents on the other hand support the judgment of the learned Subordinate Judge. They take their stand upon the ground that any right the

appellants may have had become extinct under Act No. XIV of 1859, and could not and cannot now be revived. In support of this view they cited Babu valad Sheik Ibrahim v. Bhikaji ILR 14 Bom. 317, Nobin Chunder Chuckerbutty v. Issur Chunder Chuckerbutty 9 W.R. 505, Amirto Lall v. Rajonee Kant Mitter 23 W.R. 214, Srinath Kur v. Prosunno Kumar Ghose a Full Bench case ILR 9 Cal. 934, and Hari Nath Chatterjee v. Mothurmohun Goswami ILR 21 Cal. 8.

12. "No suit," so runs Act No. XIV of 1859, Section 1, "shall be maintained in any Court of judicature unless the same is instituted within the period of limitation hereinafter made applicable to a suit of that nature, any Law or Regulation to the contrary notwithstanding." According to them the cause of action arose on the death of Musammat Harnam Kunwari on the 5th of January 1857. Within twelve years from that date the daughters of Paltan Singh should have instituted their suit to recover the property out of the hands of Harnam Pathak. They did not do so, and by the beginning of 1869 no suit to recover could be maintained in any Court of judicature.

13. In this contention, however, the respondents ignore entirely the nature of the transfer made by Musammat Harnam Kunwari, and they also with it ignore the circumstances which constitute the cause of action upon which the appellants have come to Court. Assuming for the moment the contention of the appellants that Musammat Harnam Kunwari was acting under the press of no legal necessity, she had no power to bind the inheritance as against the reversioners. All that she could do was to give to Harnam Pathak such an interest as she herself possessed, viz., an interest conterminous with her own life. Whatever might be the language of the deed by which she purported to convey the property, this is all she could convey. The respondents in their written statements have set out nothing from which it could be inferred that as against her Harnam Pathak set up any position from which any higher title or adverse possession could be inferred.

14. Again, the appellants set out as their cause of action the death of Musammat Dilraj Kunwari, and say that it did not arise until then. Their position is that they are the heirs of Babu Paltan Singh, and that they now seek to succeed to his estate. They could not do so as long as there lay interposed between them the lives of Paltan Singh's widows and daughters. During that period their right remained dormant, but, upon the death of the last survivor of these ladies the right at once revived and accrued against all who might seek to keep them out of their right. In this view the neglect or omission of the daughters of Paltan Singh to bring any suit against the respondents can in no way affect the appellants' interests. Their cause of action was not the appellants' cause of action, and, as already stated, there was no direct assertion of any adverse possession as against the appellants made during this interval. The respondents could not in the life-time of the daughters acquire any higher interest than they had already acquired, except by some overt act of adverse possession. The view taken in ILR 13 Mad. 512, is the view which I am prepared to take.

15. There is much force too, in what was said by Parsons, J., in *Cursandas Govindji v. Vundravandas Purshotam* ILR 14 Bom. 489, that the right of the heir cannot be taken away by the conduct of the widow, but by the act of the owner of the paramount estate; only his act or some act of the respondents evidencing adverse possession would operate to divest him of the estate which is conferred upon him by inheritance.

16. The cases cited by the respondents differ materially. In the first, viz., *Babu valad Sheik Ibrahim v. Bhikaji* ILR 14 Bom. 317, which was a second appeal, one Ram Chandra, a separated Hindu, had died leaving him surviving his widow Janki and a son Ganu. Ganu succeeded to the property and then died leaving him surviving his widow Sarasvatibai and his mother Janki. Sarasvatibai lived with her brother; Janki remained in possession of the property left by Ram Chandra. Janki mortgaged the property to her brother in 1854-55, and in 1862 she sold it free from mortgage to the defendants, who at once took possession. Janki died on March 6th, 1874, and afterwards Sarasvatibai died without ever having had possession of the property. In this case therefore, as both the Courts found that the possession of Janki and of her alienees was adverse to the widow Sarasvatibai, they could not do otherwise than hold that the adverse possession of Janki and her alienees for more than twelve years was a bar, not only to Sarasvatibai but also to the claim of the reversionary heirs on her death; but, as already noted above, in the present case I can find no trace of any adverse possession with the respondents during the life-time of either Paltan Singh's widows or daughters as against the appellants. Much stress was laid upon the case of *Nobin Chunder Chuckerbutty*, 9 W.R. 505. It was a Full Bench decision of the Calcutta High Court, and was relied upon in support of the contention that where the cause of action had been extinguished under Act No. XIV of 1859 no new cause of action could accrue by virtue of any of the provisions contained in the succeeding limitation Acts. But looked at carefully the precedent is one which tells strongly in favour of the appellants. As pointed out by Sir Barnes Peacock in that case and concurred in by the other Judges, it is settled Hindu law that the wife takes as heir to her husband in default of issue, and upon her death those persons succeed as reversionary heirs who would have been the heirs of the husband if he had died at that time. "It is a very anomalous position that a person should take as heir, and that his right to take as heir should be determined according to a state of facts not existing at the time of the death of the ancestor, but caused by events which may have occurred many years after his death."

17. "These considerations," he adds, "lead me to the conclusion that a reversionary heir, who is bound by a decision against a widow respecting the subject-matter of inheritance, is also barred by limitation, if, without fraud or collusion, the widow is barred by limitation."

18. Applying that rule to the present case, as no adverse possession is established against the widows or the daughters, the appellants are not to be

held as injuriously affected by the mere fact that throughout this period the respondents have held this land under a title which could not convey to them anything further than the life estate of a Hindu widow. This was their only title, and as they never asserted adverse possession they must be deemed to have held it under that title. This principle was approved by their Lordships of the Privy Council in the case of *Amirto Lal Bose v. Rajonee Kant Mitter* 23 W.R. 214. That was a case by a reversionary heir claiming succession, but also a case in which it had been found that the widow, whose life-estate intervened between him and his inheritance, had been dispossessed by trespassers who set up and maintained adverse possession under which the title of the widow to a life-estate and therefore, of the reversioners, both became extinguished. The case of *Srinath Kur v. Prosunno Kumar Ghose* ILR 9 Cal. 934, decides nothing more than this, that the rule laid down under the Limitation Act of 1859 is no longer the law under the Acts of 1871 and 1877, and that a reversioner who succeeds to Immovable property has now twelve years to bring his suit from the time when his estate falls into possession. In this case the estate did not fall into possession till the last daughter died, viz., on March 3rd, 1890. In the case of *Hari Nath Chatterji v. Mothurmohun Goswami* ILR 21 Cal. 8, *Sampurna*, whose position the Privy Council held was similar to the position of a Hindu widow, had been found to be never in possession of the estate under dispute, and that her claim to it was already barred by limitation at a time when Act No. XIV of 1959 was in force. The contention that the Act of 1877 gave the reversionary heir a new cause of action simply because *Sampurna* died in 1884 was naturally rejected; he was held bound by the decree which had been passed against *Sampurna*, and their Lordships of the Privy Council pointed out that the intention of the law of limitation is not to give a right where there is not one but to interpose a bar after a certain period to a suit to enforce the existing right. In the present case the right had continued to exist until 1890 and was subject to no bar created by the Act of 1859. The same distinction runs through, and is very dearly brought out in, the case of *Mussummat Lachhan Kunwar v. Anant Singh and Mussummat Lachhan Kunwar v. Manorath Ram* L.R. 22 IndAp 25.

19. For the above reasons I hold that the cause of action in the present case accrued to appellants on the death of the last surviving daughter, and that their suit is amply within time. I would therefore allow this appeal, set aside the judgment and decree of the lower Court, and remand the case u/s 562 of the CPC to the lower Court with directions to enter it on its list of pending cases and dispose of it according to law. Costs to abide the event.

Burkitt, J.

20. This is an appeal from a decree of the Subordinate Judge of Gorakhpur, by which he dismissed the plaintiffs' suit on the ground that it was barred by limitation. The suit was for the possession of a village to which the plaintiffs Hanuman Prasad and Jadu Nath Prasad (the other plaintiffs are their assignees) asserted title as reversionary heirs of their maternal grandfather, one Paltan

Singh. There is no dispute about the preliminary facts. The village in suit was part of the estate left by Pultan Singh, who died about 1822 A. D., leaving him surviving two widows namely, (1) Harnam Kunwari who died in January 1857, and (2) Asman Kunwari, who predeceased her co-wife. Some time before 1857 Harnam Kunwari sold the village in dispute--the sale which is impugned in this suit--to the predecessor in interest of the defendants respondents. Paltan Singh also left him surviving three daughters, namely (1) Musammat Rachpali (mother of the first two plaintiffs), who died in June 1858, (2) Musammat Jairaji, who died without issue in May 1879, and (3) Musammat Dilraji, who died without issue in November 1890. This suit was instituted in March 1894.

21. On the first of the many issues fixed by him for trial the Subordinate Judge held that the cause of action to contest the sale accrued on the death of the widow Harnam Kunwari in January 1857, and that it became barred by limitation some time in 1869 under the limitation contained in Clause 12 of Section I of Act No. XIV of 1859, which prescribes a period of twelve years from the time when the cause of action arose as the limitation period within which a suit to recover Immovable property must be brought. For the plaintiffs it was contended, and the contention is repeated in this appeal, that the limitation rule applicable is that prescribed by Article 141 of the second schedule to the present Limitation Act (Act No. XV of 1877), which in the case of a suit by a Hindu or Muhammadan entitled to the possession of Immovable property on the death of a female, prescribes a limitation period of twelve years from the time when the female dies. The appellants' contention is that, as the estate came into possession only on the death of the last survivor of Paltan Singh's daughters in 1890, they have a period of twelve years from her death within which they can sue. The respondents support the decision of the Court below.

22. A large number of cases were cited at bar and by the Court during the argument at the hearing of this appeal, viz., *Sambasiva v. Ragava* ILR 13 Mad. 512, *Hari Nath Chatterjee v. Mothurmohun Goswami* ILR 21 Cal. 17, *Cursandas Govindji v. Vundravandas Purshotam* ILR 14 Bom. 482, *Mukta v. Dada valad Supadu* ILR 18 Bom. 216, *Nobin Chunder Chuckerbutty v. Issur Chunder Chuckerbutty* 9 W.R. 505, *Appasami Odayar v. Subramanya Odayar* L.R. 15 IndAp 167, *Babu valad Sheik Ibrahim v. Bhikaji* ILR 14 Bom. 317, *Amirto Lal Bose v. Rajonee Kant Mitter* L.R. 2 IndAp 113, *Ram Kali v. Kedar Nath* ILR 14 All. 156, *Lachhan Kunwar v. Manorath Ram* L.R. 22 IndAp 25, and *Drobomoyi Gupta v. Davis* ILR 14 Cal. 343.

23. The above cases may be roughly divided into two classes, the first being that in which the widow or other female, in succession to (but not through) whom the reversioner claimed, had been dispossessed or had been kept out of and had not obtained possession of the property, e.g. by a trespasser, by a decree of Court or the like.

24. The case of *Nobin Chunder Chuckerbutty v. Issur Chunder Chuckerbutty* 9 W.R. 505, was one in which a separated Hindu died leaving him surviving two

sons, two daughters and a widow. The sons died without issue in the life-time of their mother, upon whom their respective estates then descended as heir. The mother, however, never got possession, as on the death of the sons a stranger, a trespasser, entered on the property and took and retained possession. On suit by the daughters' sons for possession after the death of the mother (the limitation law applicable being Act No. XIV of 1859) it was contended for the reversioners that they had acquired a fresh cause of action on the death of the mother. It was held on the authority of the *Shiva Ganga* case 9 Moo. I.A. 539, that, if the mother had sued the trespasser for possession and (without fraud or collusion) had failed to make out her case, the reversionary heirs would have been bound by the decision, and that on the same principle the adverse possession against her was adverse also to the reversioners, the reason being "that the widow fully represents the estate, and it is also settled law that adverse possession which bars her bars the heir also after her." As to an alienation made by a female heir it was held that no cause of action would accrue to her against her grantee, who would not be a wrong-doer, during her life, but that the alienation would not be binding against the reversioner. The cause of action would not arise till her death, when the reversioner's cause of action for the first time accrues. As to the case in which the female never got possession of the property, it having been held adversely to her and never having reached her hands, it was held that the suit to recover the property by ejectment of the wrong-doer must be brought within twelve years from the commencement of the adverse possession. The meaning of the learned Judges who decided this case clearly was that in such a case the cause of action arose once and for all on the commencement of the trespass. This case was cited with approval by their Lordships of the Privy Council in the case of *Amirto Lal Bose v. Rajonee Kant Miiter* L.R. 2 IndAp 113.

25. In *Babu valad Sheik Ibrahim v. Bhikaji* ILR 14 Bom. 317, a separated Hindu died leaving him surviving his widow and a son. The son succeeded to the property and died leaving a widow, on whom his estate descended as heir. The son's widow, however, was kept out of possession by her mother-in-law (the father's widow), who had no title to the property, but who retained possession of it and ultimately sold it. Subsequently, on suit brought by the son's reversioners after the death of the son's widow, it was held (following the two cases above cited) that the possession of the usurping mother-in-law and of her alienees was adverse, not only to the true heir, the son's widow, but also to the son's reversioners. The case was one under Act No. XIV of 1859, and the Court considered it unnecessary to discuss the effect of Article 142 of Act No. IX of 1871 and Article 141 of No. XV of 1877, In *Hari Nath Chatterjee v. Mothurmohun Goswami* ILR 21 Cal. 8, the plaintiff as son of the survivor of five daughters of his maternal grandfather, who herself died in 1884, sued in April 1887, to recover his share in his maternal grandfather's property, from the sons and grandson of his mother's sisters. The defence was that his suit was barred" by a decree obtained against his mother, who had sued for possession in 1879 against a son of one of her sisters and had been defeated. Their Lordships of the Privy Council, after

referring to the changes in the law of limitation from Act No. XIV of 1859 to Act No. IX of 1871 and Act No. XV of 1877, cited the judgment in the Shiva Ganga case 9 Moo. I.A. 539, in which it had been held that an adverse decree in a suit brought by a Hindu widow for possession of a zamindari as heir to her husband would, if it had become final in her life-time, have bound those claiming in succession to her, and would have barred any new suit by any person claiming in succession to her unless the decree could be successfully impeached on some special ground. Their Lordships then went on to remark that the judgments in Nobin Chunder v. Issur Chunder 9 W.R. 505, and in Amirto Lal Bose v. Rajonee Kant L.R. 2 I. A. 113, were not directly applicable (no doubt because those cases turned on adverse possession against the female heir and not on a decree of Court), and held that the estate to which the plaintiff's mother had succeeded was similar to the estate of a widow, and that the principle of those decisions would apply to it. Their Lordships then considered the contention that (the law being as described in the three cases cited above when Act No. IX of 1871 was passed), the effect of Article 142 in the schedule to Act No. IX of 1871 and of Article 141 in the schedule to Act No. XV of 1877 was that a decree founded on the law of limitation was now exempted from the rule laid down in the Shiva Ganga case 9 Moo. I.A. 539, and that the decree in the plaintiff's mother's suit of 1879 only bound her, and that the plaintiff had under Article 141 a period of twelve years from her death to bring a suit. For that contention their Lordships could see no ground. They held that the words in Article 141 "entitled to the possession of immovable property" referred to the then existing law, under which the plaintiff would not (by reason of the adverse decree) be entitled to bring a suit for possession, the intention of the law of limitation being not to give a right where there is not one, but to interpose a bar, after a certain period, to bar a suit to enforce an existing right; and finally their Lordships say that Article 141 cannot be construed as altering the law respecting the effect of a decree. In Lachhan Kunwar v. Anant Singh L.R. 22 IndAp 25, the facts are the same as in Babu valad Sheik Ibrahim v. Bhikaji I.L.B. 14 Bom. 317, cited above. A Hindu widow took possession of her husband's property to the exclusion of her son's widow, the true heir, and held possession for twenty-five years. Their Lordships held that if she took possession absolutely and without any qualification, her possession would be a bar to the title of all persons who could claim as reversioners. Their Lordships approved of the decision then under appeal, in which it was held that the trespasser by virtue of her adverse possession had acquired an absolute indefeasible title to the property, extinguishing not merely the title of the next heir (the son and after him his widow), but also that of the reversioners expectant on the death of the son's widow. The last of this class of cases to which I would refer is that of Appasami Odayar v. Subramanya Odayar L.R. 15 IndAp 167. The suit in it was brought to recover the plaintiff's share in joint ancestral property from which the plaintiff alleged he had been excluded by the defendants. It was held by their Lordships of the Privy Council that the plaintiff's suit had been barred by Clause 13 of Section 1 of Act No. XIV of 1859, which prescribed twelve years from the date of the last participation in the profits

of the estate as the limitation period, and their Lordships further held that the right to sue could not have been revived by the later limitation Acts. They also held as in *Hari Nath Chatterjee v. Mothurmohun* ILR 21 Cal. 8 that if the limitation Acts had altered the law (of limitation), they had not revived the right of suit. This case, therefore, though it is not one of a suit by a reversioner claiming on the death of a female, is of importance on the limitation question.

26. From a consideration of the above case it seems to me that the following rules can be deduced, namely, (1) that decrees affecting immovable property obtained against a female heir in respect of the subject-matter of the inheritance (if obtained without fraud or collusion or the like) are binding on the reversioner: (2) that an alienation made by a female heir in possession is good against her for her life, but is not necessarily binding on the reversioner, to whom, if it be invalid, a cause of action accrues on the death of the female heir: (3) that where property, the estate in which has descended to a female heir, never reaches her hands, but is held adversely to her by a stranger, the cause of action for a suit for the recovery of the property accrues at the commencement of the adverse possession by the stranger, and a suit to enforce that cause of action will be barred both against the female heir and against the reversioner after the expiration of the statutory period of limitation counting from the commencement of the adverse possession, the stranger having after the expiration of that period acquired an absolute indefeasible title to the property, and (4) that the enactment of Article 142 in the schedule to Act No. IX of 1871 and of Article 141 in the schedule to Act No. XV of 1877 has not made any alteration in the law laid down in the last preceding rule.

27. In the second class of cases the first I would cite is *Sambasiva v. Ragava* ILR 13 Mad. 512. In it the facts are that a separated Hindu died in 1845, leaving him surviving a widow, who died in 1846, and two daughters, the survivor of whom died in 1883. The plaintiff, a son of the last-mentioned daughter, sued in 1887 to set aside an alienation made by the other daughter in 1850 while she was in possession of her father's property. The District Judge held that the suit became barred by limitation in 1862 under Act No. XIV of 1859. The High Court, however, on appeal took a different view, remarking: "We take it therefore as settled law that when the defendant gets into possession under an invalid alienation made by a widow his possession is not adverse against the reversioner until the widow's death, but when the defendant comes into possession by an act of trespass that the title he acquires is good as against the representative of the inheritance for the time and consequently against the reversioner." The Court further considered the argument that a suit by the plaintiff's mother to impeach the alienation would have been barred after twelve years from her sister's death and that therefore the plaintiff would be barred. The Court, however, rejected that argument holding that the title which the alienee acquired against the plaintiff's mother by the lapse of twelve years would not be higher than that which might have been created by a conveyance from her which would not be binding on the plaintiff. It was therefore held that there was no bar of limitation

against the plaintiff.

28. In *Cursandas Govindji v. Vundravandas Purshotam* ILR 14 Bom. 482, there was no complication of any kind. The plaintiff reversioner sued within twelve years from the death of the survivor of the two widows of the last male owner, and the Court held he was not time barred, remarking that as long as either of the widows lived the plaintiff had no right of action and could not sue for possession. This case was followed and approved in *Mukta v. Dada valad Supadu* ILR 18 Bom. 216.

29. *Ramkali v. Kedar Nath* ILR 14 All. 156, is undoubtedly a strong case. The facts in it resemble very much those in *Lachhan Kunwar v. Anant Singh* L.R. 22 IndAp 21, and are that a separated Hindu died in 1862 leaving a widow and daughter, but no son. The estate descended to the widow, but possession never reached her, as a nephew of her husband (who had no title whatever as long as the widow and daughter lived) took possession of the property, and retained possession for twenty-five years up to the death of the widow in 1887. The daughter then sued for possession, and it was held by the Court that Article 141 of the second schedule to the Act No. XV of 1877 applied, that the plaintiff had twelve years from the death of the widow in 1887 within which to sue, and that the suit was not time-barred, as the limitation period began to run from the death of the widow. It is not easy to reconcile the decision in this case with that in *Hari Nath Chatterjee* and in *Lachhan Kunwar* and others of the cases cited above, and possibly the decision may have to be reconsidered.

30. In *Drobomoyi Gupta v. Davis* ILR 14 Cal 343 the facts are that a Hindu widow created a peculiar kind of tenure in favour of certain tenants and died in 1861. She was succeeded by her two daughters, the survivor of whom died in December 1880. The plaintiffs sued as reversioners (daughter's sons) in 1884 for possession of the land by ejectment of the tenure holders. It appeared that the plaintiff's predecessors, the two daughters, had in 1873 taken proceedings against the tenure holders, seeking to oust them on the ground that the instruments which constituted the tenure were forged. That suit failed. It was held that the reversioners were barred by limitation. There was also a question of *res judicata*, but the Court refused to adjudicate on it. On the question of limitation--and this is the reason why the case was cited here by the appellant--the Court observed that the possession of the tenure holders was not adverse to the widow, and if it could be shown that the daughters had ratified the settlement, the possession would not have been adverse to them either. But as the daughters, instead of ratifying the settlement, did everything they could to upset it, and impugned the documents constituting it as forgeries and denied that they were bound by them even if genuine, the Court held that the possession of these tenure holders was adverse to the daughters and to their successors the plaintiffs. From the above it will be seen that, with the exception of the case of *Ram Kali v. Kedarnath* ILR 14 All. 156, all the cases of this second class have been decided in accordance with some one or other of the four rules

set forth above.

31. Now, applying the rules of law laid down in the cases above cited to the appeal before me, I remark that there is not in this case any adverse possession by a stranger or trespasser against the true heir, as there was in the cases of Nobin Chunder, Babu valad Ibrahim, Lachhan Kunwar and Ram Kali. Nor is there any adverse decree, as in the case of Hari Nath Chatterjee and Drobomoyi Gupta. There is here an alienation, possibly invalid, created by the widow shortly before her death in 1857, and there is the fact that the next set of female heirs, the daughters, between 1857 and the death of the survivor of them in 1890, made no attempt to set aside the alienation. Had they made such an attempt and failed, I certainly should hold that the decree in their suit would, in the absence of fraud or collusion or the like, be binding on the reversioners, the plaintiffs. It may be that a suit by the daughters would have been barred by limitation after 1869. It is unnecessary for me to decide that point. But, assuming that it would have been so barred, is the suit by the present reversioners also barred? The contention is that the reversioner's cause of action was barred under Act XIV of 1859. If that were so, it would not be revived by Article 141 of the second schedule to the Limitation Act, 1877. I am of opinion that the suit is not so barred. This is not a case in which, as in Nobin Chunder's case, it could be held that the cause of action accrued once and for all on the commencement of a wrongful possession, but is one of an alienation created by a female heir while in lawful possession. I take it that during the period between 1857 and 1890 the daughters, not having taken any steps to set aside the alienation, must be considered to have acquiesced in and ratified it, and the title which the alienee might acquire against them by twelve years adverse possession of their interests in the property under such acquiescence or ratification, being possession only of the limited interest of a Hindu female heir, would not in my opinion be adverse to nor bar the reversioners. The reversioners had no title to sue for possession of the property during the life-time of the female heirs, and there is no law compelling reversioners to sue to set aside invalid alienations made by a female heir in possession, such alienation not being binding on the reversioners. It would be different on the authorities if the female heir while in possession was dispossessed by a trespasser, or if such heir never got possession. In such a case the reversioner would be bound by the adverse possession obtained by the trespasser, if prolonged beyond the statutory limit, as also he would be bound by a decree adverse to the female heir affecting the property. But in the present case I am clearly of opinion that the suit is not barred by any rule, there being no adverse possession by a trespasser nor any adverse decree of Court affecting the property. I would therefore set aside the finding of the Subordinate Judge on the first issue and also his decree founded on that finding dismissing the suit, and, as his decree proceeds on a preliminary point. I would, u/s 562 of the Code of Civil Procedure, remand the record to him for trial of the remaining issues.